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List of issues in relation to the initial report of Germany

Addendum

Replies of Germany to the list of issues* **

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* The present document is being issued without formal editing.
** Appendices can be consulted in the files of the secretariat.

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Preliminary remark

1. In accordance with Article 20, Paragraph 1, of the German Basic Law (Grundgesetz, GG), the Federal Republic of Germany is a federation consisting of Länder (federal states). Consequently, the Federal Government and the constituent Länder are fundamentally independent in performing their constitutional responsibilities at their respective level. As a rule, the Federal Government has no intervention rights with regard to the Länder.

I. Aims and general obligations (arts. 1-4)

General obligations (art. 4)

Reply to the issues raised in paragraph 1 of the list of issues (CRPD/C/DEU/Q/1)

2. Action plans are the instruments by which the Länder implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Almost all the Länder have already passed an action plan or equivalent sets of measures. Baden-Württemberg, Bremen and Schleswig-Holstein are planning its preparation/publication. Saxony was the only federal state not to provide any information concerning the preparation of an action plan.

3. The individual action plans differ not only in their title (Action Plan, Package of Measures, etc.) but also in how their content is devised and how they are put together. One relevant common thread is worth mentioning: all the Länder showed that associations and representative organisations of persons with disabilities were directly involved in the development process.

4. For details on individual Länder, see the Appendix Volume, Question 1.

Reply to the issues raised in paragraph 2 of the list of issues

5. The planning and development of a draft of the Federal Government's Operational Programme (OP) for the European Social Fund (ESF) for the programming period 2014 to 2020 was part of a comprehensive consultation process.

6. In accordance with Article 5 of (EU) Regulation 1303/2013, the preparation stage involved both economic and social partners, relevant municipal – and other – authorities, as well as the relevant bodies representing the community at large, "including environmental partners, non-governmental organisations and bodies responsible for promoting social inclusion, gender equality and non-discrimination". In addition and in line with Annex XI of (EU) Regulation 1303/2013, "arrangements in accordance with the institutional and legal framework of Member States for the consultation and involvement of bodies in charge of protection of rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes" were met.

7. Accordingly, at the very beginning of the planning stage, a variety of associations and organisations were invited to a consultation meeting in October 2012 to discuss the future scope and direction of Federal Government ESF funding. These also included a number of partner organisations representing the interests of persons with disabilities. The ESF focal points proposed by the Federal Government were also presented in autumn 2013 for consultation with associations under the auspices of the UN Convention on the Rights of Persons with Disabilities monitoring body.

8. As a large number of types of discrimination need to be borne in mind with ESF funding, the Federal Anti-Discrimination Agency in particular was involved in the further planning stages. The official OP submission in May 2014 was also accompanied by a statement from a national equality body on observing the horizontal objectives of "equal opportunities and non-discrimination" and "equality of men and women". A corresponding statement was put out by the Federal Anti-Discrimination Agency, which is the national body for fostering equality in line with Directive 2000/43/EC; this met with positive approval.

9. The horizontal objectives mentioned above are to be followed in the respective ESF programmes and so benefit persons with disabilities at the implementation level too. Actual participation is dependent on the structure specific to the relevant programmes. The ESF programme "Integration through Exchange (IdA)" is a good example from the programming period that ran from 2007 to 2013. It aims to integrate persons with particular difficulties into work or training. In its second stage, the programme enables persons with disabilities to gain professional experience in other EU countries, to improve their employment skills, and therefore to increase their chances of getting a job and make it easier for them to access the training and labour market.

10. The participation of associations of persons with disabilities in the development and monitoring of the European Social Fund in the Länder – in as far as this happens – is guaranteed for the most part by membership of the ESF Monitoring Committee. In six Länder (Baden-Württemberg, Brandenburg, Hesse, North Rhine-Westphalia, Saarland and Saxony) they are represented by the League of Voluntary Welfare Associations. In Hesse, the State Welfare Association is a member.

11. In three Länder (Bavaria, Berlin and Bremen) participation is ensured by the respective State Commissioner for Matters relating to Disabled Persons being a member of the Monitoring Committee. In the case of Bavaria, this is ensured via statements and consultation and in the case of Bremen as a voting member of the ESF Monitoring Committee. In Thuringia, the State Commissioner participates indirectly in the development of directives on priority axis B. Furthermore, it should be pointed out that, in Thuringia, the involvement of the German Equality Welfare Association and the Workers' Welfare Association and the participation of the League of Voluntary Welfare Associations in the State Advisory Board for labour market policy give associations the opportunity to influence the development and monitoring of ESF programmes. In the case of Saxony-Anhalt, associations are assured involvement through the Centre of Excellence for the Support of Economic and Social Partners in Saxony-Anhalt (WKZ).

12. Four Länder (Hamburg, Mecklenburg-Vorpommern, Lower Saxony and Rhineland-Palatinate) do not have any form of involvement allowing associations of persons with disabilities to participate in the development and monitoring of ESF programmes. Rhineland-Palatinate justifies this by arguing that this would represent preferential treatment in comparison to other disadvantaged groups on the labour market and this is the reason why they are not involved. Hamburg points out that although there is no involvement in the decision-making bodies, the number of projects for persons with disabilities is very high when compared nationally.

13. For details on individual Länder, see the Appendix Volume, Question 2.

Reply to the issues raised in paragraph 3 of the list of issues

14. Since the UNCRPD was ratified by the German Bundestag and Bundesrat, the UNCRPD has entered German law, is on a par with an ordinary federal statute and is binding, in line with the UNCRPD, Article 4, Paragraph 5, on the Federal Government and the Länder. It also assists authorities and courts in interpreting national standards.

15. As early as during the ratification process of the UNCRPD, the Federal Government stressed that it considered that German legislation complied fundamentally with the UNCRPD (cf. Federal Government memorandum, Bundestag printed paper 16/10808, p. 45), and problems and deficiencies impeding the participation and self-determination of persons with disabilities often result from the inadequate application of national law. Therefore all possible ways of applying legislation in practice, and in a way that conforms with the Convention, are to be exhausted before consideration is given to legislative changes to clarify the position.

16. The Federal Government aims to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without any discrimination on the basis of disability in accordance with the obligation laid down by the UNCRPD, Article 4, Paragraph 1. However, a substantial part of UNCRPD requirements is made up of economic, social and cultural rights. These are covered by the progression clause of UNCRPD, Article 4, Paragraph 2. Therefore the Federal Government also considers itself bound to make vital improvements in implementing these rights on an ongoing basis as part of its legislative mandate and to do all it can to rectify existing deficiencies in law enforcement.

17. In this respect, the conformity of existing legislation and draft legislation with the requirements of the UNCRPD is continually reviewed and, on occasion, subject to further investigation. For example, the Federal Government has therefore commissioned an evaluation of the Equal Opportunities for Persons with Disabilities Act (Bundesbehindertengleichstellungsgesetz, BGG). On the basis of this evaluation – alongside ways to improve implementation of existing law – we shall see whether the existing BGG legislation should be clarified or extended.

18. Seven Länder (Bavaria, Berlin, Brandenburg, North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Thuringia) are basically of the view that their respective standards comply with the UNCRPD. In three of these six cases, this assertion is based on the fact that their standards have already been reviewed (Bavaria, Berlin and NRW) and, in one further case, on the fact that federal state norms have been and continue to be reviewed step-by-step by the State Advisory Board on the Participation of Persons with Disabilities (Rhineland-Palatinate). Brandenburg and Thuringia point to their equality laws and assume on this basis that their legislation fundamentally complies with the UNCRPD.

19. Seven Länder (Baden-Württemberg, Bremen, Hesse, Lower Saxony, Saxony, Saxony-Anhalt and Schleswig-Holstein) believe that their state norms have yet to comply adequately with the UNCRPD. With the exception of Saxony, all these Länder either intend to review their norms or have already begun to do so (Hesse, Lower Saxony and Saxony-Anhalt).

20. This means that at least ten German Länder are currently looking to bring their state norms into line with the UNCRPD or have already done so. A further two do recognise the need for alignment, however as yet have no plans to review their norms.

21. Most Länder currently have mechanisms similar to the planned legislation. This is how Bavaria, Brandenburg, Hesse, Rhineland-Palatinate, Saxony and Saxony-Anhalt describe the obligation enshrined in their respective equality laws to involve the State Commissioner for Matters relating to Disabled Persons. But this refers to a consultative role only and not to any intervention in the parliamentary process.

22. Special projects or regulations relating to the UNCRPD are currently to be found:

- In Baden-Württemberg: there are plans to make explicit use here of a checkpoint called "UNCRPD Implementation" as part of administrative rules applied by state

government and ministries when drawing up regulations (cf. table in Appendix Volume);

- In Hamburg, where they intend to introduce a procedure whereby the Focal Point will be involved in all inclusion issues and will check that the respective norms comply with the UNCRPD;
- In North Rhine-Westphalia, where a norms testing procedure is to be enshrined through the "First General Act to Improve Social Inclusion in North Rhine-Westphalia".

23. Additionally, some Länder are planning or trialling the adoption of an obligation to involve associations of persons with disabilities in the formulation of legislation and regulations that affect or may affect persons with disabilities in the Joint Rules of Procedure in each of their state governments. Hesse, North Rhine-Westphalia and Rhineland-Palatinate made statements to this effect.

24. For details on individual Länder, see the Appendix Volume, Question 3.

II. Individual rights

A. Equality and non-discrimination (art. 5)

Reply to the issues raised in paragraph 4 of the list of issues

25. In order to implement the UNCRPD, the Federal Government passed a National Action Plan in the last legislative period and this is being further developed in the current legislative period. The National Action Plan also allows for an evaluation of the Equal Opportunities for Persons with Disabilities Act (BGG). As part of this evaluation which is currently taking place, a check will also be made – in the light of UNCRPD – as to whether action is needed with regard to the expression "reasonable accommodation". As things stand, it may well be that the results of this assessment will affect not just the BGG but other existing legislation also.

26. A total of five Länder take the view that legal entitlement to reasonable accommodation is already enshrined in the state in question (Bavaria, Bremen, Lower Saxony, Saxony-Anhalt and Thuringia). However, "reasonable accommodation" is only spelled out in Saxony-Anhalt's Equal Opportunities for Persons with Disabilities Act of 16 December 2010. Bremen points to a passage in its BGG which refers to "special measures". The extent to which there is crossover between "special measures" and "reasonable accommodation" is as yet unclear in the current discourse.

27. The remaining Länder confirming that the requirements are enshrined in law point to the respective equality legislation or to Article 3, Paragraph 3, of German Basic Law (Grundgesetz, GG). But there is no explicit mention of reasonable accommodation. Brandenburg, Hesse and Rhineland-Palatinate make reference to their respective equality legislation but make no claim to have the requirements enshrined in law. Saxony also responds in the negative, but points out that in this context reasonable accommodation is to be found in special norms (the Education Act is quoted as an example). Hesse and Rhineland-Palatinate also point out that individual entitlements in other legal provisions may be termed as reasonable accommodation but can also be interpreted differently depending on the context. As yet there is no concrete definition of the term here.

28. No federal state has a fixed schedule for implementing legal requirements. Some declarations of intent to enshrine reasonable accommodation in law, or at least to examine this, were made; see the Appendix Volume, Question 4.

29. Explicit protection against discrimination as laid down in 2013 in the Universal Periodic Review (A/HRC/WG.6/16/DEU/1) is neither mentioned by the Länder in the context of enshrining requirements in law nor in relation to concrete safeguards.

30. With regard to the regulations, from which it follows that the refusal to provide reasonable accommodation is counted as discrimination, the responses from all Länder refer to state norms which do not include any explicit mention of reasonable accommodation. Again the tendency here is to refer to disability equality acts (Hesse, Lower Saxony, Schleswig-Holstein), but also mention is made of the right of associations to take legal action (Bremen) and, once again, the Act on Greater Inclusion (NRW). Berlin, Brandenburg, Hamburg and Saxony-Anhalt refer to their own information as given above.

31. For details on individual Länder, see the Appendix Volume, Question 4.

B. Accessibility (art. 9)

Reply to the issues raised in paragraph 5 of the list of issues

32. The German Federal Equal Opportunities for Persons with Disabilities Act (BGG) includes regulations to achieve comprehensive barrier-free access. There are corresponding regulations in the Equal Opportunities for Persons with Disabilities Acts at federal state level. In particular areas, barrier-free access is specified in special laws at both national and federal state levels. As regards national transport legislation, for example, the Carriage of Passengers Act (cf. PBefG, Section 8, para. 3), the Construction and Operation of Railways Regulations (cf. EBO, Section 2, para. 3) and the Civil Aviation Act (cf. LuftVG, Section 19d) were amended when the BGG[1] was introduced.

33. With a further amendment to PBefG, which came into force on 1 January 2013, a deadline for the achievement of total accessibility in local public transport became legally binding. Exceptions are possible within strict parameters only. Through this same PBefG amendment, long-distance bus transportation was liberalised and it was determined that from 1 January 2020 all long-distance buses in Germany must offer appropriate spaces for two wheelchair users and must have boarding aids (vertical lifts); this will apply to new buses from as early as 1 January 2016.

34. The Telecommunications Act (TKG) contains, amongst other things, regulations on accessibility (cf. TKG, Section 45). The General Equal Treatment Act (AGG) prohibits discrimination on the basis of disability within civil law (AGG, Section 19).

35. The Federal Government is committed to making tourism available to all and is moving steadily towards the goal of barrier-free travel throughout the entire tourism service chain. Barrier-free tourism is one of the sectors in Germany with growth opportunities, since its economic potential has been only partially exploited. Demographic change, which is causing a significant rise in the number of older persons and thereby a growing number of people who are less able to get around and lead an active life, serves to underline the significance of services and facilities with easy access.

36. The project entitled "Development and Marketing of Barrier-free Services in the Spirit of Tourism for All in Germany" aims to develop and market barrier-free products and services that are mainly geared towards the specific desires and needs of customers with various disabilities, and thereby to offer the providers improved opportunities to develop and organize their products accordingly. The aim here is to use quality-testing and

[1] Omnibus act on the equality of disabled persons and other amending acts of 27 April 2002, Federal Law Gazette I, 1467, 1468.

consistent presentation to provide reliable and detailed information about the ease of use and kind of experiences offered by the tourism infrastructure, products and services, and thereby allow customers to make an informed choice on their travel options. The project was launched in September 2011 and will run until August 2014. A second project is planned to design and programme a nationwide database of all barrier-free products and services.

37. Furthermore, target agreements to create barrier-free access in areas covered by private law are to be made between associations and private businesses or business associations, for their respective functional and geographical spheres of organization and activity (cf. BGG, Section 5). The associations can demand negotiations on target agreements. Such agreements make it possible to find flexible solutions for various life situations — solutions tailored to the particular needs of those concerned. The BGG was the subject of an expert review in 2013/2014. No decision has yet been made on how to take it forward.

C. Equal recognition before the law (art. 12)

Reply to the issues raised in paragraph 6 of the list of issues

38. As a result of the third act amending the Adult Guardianship Law, which came into force on 1 September 2009, Section 1901a of the German Civil Code (BGB) regulates a living will by law. By enshrining the living will in law, patients have greater powers of self-determination. They can declare in advance whether, in the case of their being unable to give their consent, they consent to or forbid treatment or medical interventions in specified examinations of their state of health, provided that such examinations are not imminent when they make such a declaration. Declarations in an effective living will are binding irrespective of the seriousness of an illness, if the patient's intentions for a specific life and treatment situation are explicit and can be declared reliably.

39. The guardian needs to ensure that a living will is respected when it applies to a current life and treatment situation. This is directly applicable. There is no room for a decision to be made on behalf of the patient.

40. With the Act regulating consent to compulsory medical treatment that came into force on 26 February 2013, the legislature has made provision for strict material and procedural requirements for the treatment of a person under guardianship who is unable to give consent due to illness but does not wish to be treated; it has therefore increased the patient's powers of self-determination.

41. From a substantive law viewpoint the following conditions are now required: due to a psychiatric illness or a mental or psychological disability the person under guardianship is unable to see the need for medical treatment or to act in accordance with his/her understanding; attempts must be made to convince the patient of the need for the medical procedure; the medical procedure must be essential for the patient's well-being, to prevent the patient from suffering significant health damage; there must be no other reasonable way of preventing the patient from suffering such damage; the benefits expected from the compulsory medical treatment must clearly outweigh any expected adverse effects. The compulsory medical procedure or treatment may only be performed on an inpatient basis. The guardian's consent to medical treatment requires approval by the Adult Guardianship Court. The Guardianship Court is obliged in particular to consult with the patient personally, to obtain a report from an independent expert and to appoint a case guardian to assert the rights and interests of the patient in the legal process. The judicial decision must include the type of inpatient accommodation, its length (a maximum of 6 weeks), and detailed information on how the medical procedure is to be carried out and documented.

42. The law to strengthen the functions of the guardianship authority came into force on 1 July 2014. It obliges the guardianship authorities to act already before the case is taken to an adult guardianship court by arranging for "alternative assistance" to the persons concerned in close cooperation with the social benefit agencies. The aim is to establish the legal priority of alternative assistance that avoids the need for guardianship in practice as well. Arrangement of personalized assistance as provided for under social legislation should do away with the need to appoint guardians.

43. Should a guardian be appointed, he/she is basically able to act as the representative of the person under guardianship. However, their ability to act as the representative of the person under guardianship is subject to two limitations: Firstly, the guardian may only represent the person under guardianship in the range of activities determined by the court (e.g. looking after the person's property/assets and health), BGB, Section 1902. Secondly, even within this range of activities, provision is made for the guardian to represent the person under guardianship only in so far as this is absolutely necessary to look after the latter's affairs, BGB, Section 1901.

Reply to the issues raised in paragraph 7 of the list of issues

44. According to the German Civil Code, Section 1903, Paragraph 1, the Adult Guardianship Court can only order a reservation of consent when this is necessary to prevent a substantial danger to the person or to the property of the person under guardianship. A reservation of consent therefore serves only to protect the person under guardianship and may only be ordered under strict conditions. This regulation applies equally to all persons under guardianship and not only to those with a disability. Accordingly, in legal practice a reservation of consent is rarely ordered, as the strict conditions for this are scarcely met. An analysis of guardianship court records showed that in 2007 a reservation of consent was ordered in just 8% of the records of professional guardianship analyzed.

45. Article 12 of the CRPD is aimed at giving persons with disabilities the recognition before the law that is their due. Article 12, Paragraph 2, of the CRPD states that this involves the obligation to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. This also applies to the reservation of consent regulations. They do not tie in with the disability but apply to persons without disabilities just as they apply to persons with disabilities. Article 12 of the CRPD does not however exclude the possibility, as laid out in its Paragraphs 3 and 4, that measures may be taken to protect persons under guardianship – irrespective of whether or not they have a disability – that may limit the person's ability to exercise their legal capacity on their own. Reservation of consent serves this purpose by protecting persons with disabilities and persons without disabilities alike from being outwitted on the basis of their individual situation and thus hampered in exercising their legal capacity in the fullest way as would be desirable.

D. Access to justice (art. 13)

Reply to the issues raised in paragraph 8 of the list of issues

46. Access to justice for persons with disabilities is guaranteed by German law. General regulations are contained in the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

47. Hearing- and speech-impaired persons have the right, when they are involved in German court proceedings, to choose to communicate in German sign language, signed language or via other technical communication aids.

48. For blind and visually impaired persons, the law to promote legally binding electronic communications and transactions with courts of law of 10 October 2013 (Federal

Law Gazette I, p. 3786) has led to a revision of Section 191a of the GVG and significantly extended the requirement for accessible versions of written documents in legal procedures. In terms of the language used, the standard has been brought into line with the UNCRPD definitions.

49. According to Section 191a of the GVG that came into force on 1 July 2014, blind and visually impaired persons can submit documents in a form accessible to them as well as receiving accessible versions of all the relevant documents for the proceedings in progress. Furthermore, barrier-free access to statements and documents is guaranteed on demand from the party in question, or the person representing their rights, as long as the party/representative is blind or visually impaired. Section 191a of the GVG also ensures that the electronic forms that have been introduced (Section 130c of the Code of Civil Procedure (ZPO); Section 14a of the Act on Procedure in Family Matters and Non-Contentious Matters; Section 46f of the Labour Courts Act; Section 65c of the Social Courts Act; Section 55c of the Code of Administrative Court Procedure; Section 52c of the Code of Procedure for Fiscal Courts) are made accessible to blind or visually impaired persons. Finally, Section 945b of the Code of Civil Procedure makes provision for the register of protective letters to be fully accessible.

50. A further amendment to the GVG, Section 191a, Paragraph 3, will come into force on 1 January 2018 and will ensure that, even when secure transmission methods are being used for communication with courts, the requirement for barrier-free access must be guaranteed.

Reply to the issues raised in paragraph 9 of the list of issues

51. Since the law enacting the international agreement in line with German Basic Law, Article 59, Paragraph 2, Sentence 1, was approved by the Bundestag and the Bundesrat, an order of application has been issued for the provisions of UNCRPD and the supplementary protocol, which is binding on all courts and across Germany at the federal and state level in line with the rule of law established in German Basic Law, Article 20, Paragraph 3.

52. Under certain conditions, provisions in international legal agreements such as the UNCRPD are directly applicable and give individual rights to each and every citizen. The international legal norm is then not only an element of justification, but the justificatory basis for a judicial decision. In order for the UNCRPD to give individuals a direct legal entitlement against the state, international legal provision must be clearly and adequately defined and it must entitle or oblige both the individual and the national legislature through its wording, aim and contents. Whether this is the case needs to be examined by the court on the basis of currently available methods of interpreting international law. If, on the other hand, German Federal or state law is the direct basis of a decision in an individual case, the UNCRPD is an applicable law to be consulted by the courts as an interpretation aid or justificatory element in the interpretation of national norms.

53. To help the judiciary and academia become more aware of the significance of the UNCRPD in the German legal system, the Federal Ministry of Labour and Social Affairs (as a Focal Point in line with the UNCRPD, art. 33, para. 1) is planning, in cooperation with the German Institute for Human Rights (as a monitoring body in line with the UNCRPD, art. 33, para. 2), an expert discussion with judges and academics on how the Convention can be put into legal practice. The expert discussion is likely to take place at the end of 2014.

Reply to the issues raised in paragraph 10 of the list of issues

54. With regard to contracts between a business and an adult consumer, in which the business commits to the transfer of living space and the provision of care or support

services helping to overcome a need caused by age, care requirements or disability, the Federal Act on contracts providing housing with care services (Wohn- und Betreuungsvertragsgesetz, WBVG) comes into use as a modern law of consumer protection. When there are legal disputes, access is granted to the regular courts.

55. As far as a facility comes under the state regulations for care, residential and support facilities, the home supervisory authority is responsible for the quality of the facility and must investigate valid complaints from residents. State law also specifies that, amongst other things, facilities for persons with disabilities should hold elections for residents' councils or so-called advocates.

56. As part of the Länder care home laws and residence and participation legislation (the terminology differs between the Länder), procedures for making complaints have been put in place for the benefit of persons with disabilities living in special facilities. Complaints can be made to the supervisory authorities or also internally, e.g. as part of residents' participation ("home councils"). The supervisory authorities advise residents on how to make a complaint and carry out inquiries. Additionally, residents of "special facilities" are able to exercise their contractual rights in civil law in line with the aforementioned Federal Act on contracts providing housing with care services (WBVG).

57. Persons with disabilities can also make complaints to the State Commissioners for Matters relating to Disabled Persons or the Länder ombudsmen, who investigate such complaints thoroughly.

58. The committal of mentally ill persons is regulated by state law, and inspection commissions deal with complaints in many Länder in connection with this. The inspection commissions report regularly to the relevant administration and parliaments.

59. The legal procedure for opposing decisions by psychiatric or correctional facilities is regulated at the federal level in the Prison Act (StVollzG), Section 138, Paragraph 3, 109 ff. In line with this, an application can be made for a judicial decision against a measure to regulate individual issues when this deals with the execution of measures of rehabilitation and prevention involving deprivation of liberty.

60. The psychiatric and correctional facilities can be visited and inspected by other independent bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), by the Council of Europe's Anti-Torture Commission and by the National Agency for the Prevention of Torture (States' Commission), based in Wiesbaden.

61. Patients being treated as an inpatient – in hospitals or in psychiatric units particularly – can make use of a complaints department.

62. In all Länder and at the nationwide level too there is a constitutional right of petition that is also available to persons with disabilities living in special facilities, for complaints to parliaments and the relevant authorities and public administration authorities.

63. In line with Book VIII of the Social Code, those running facilities for children and young persons only receive an operating license when the welfare of children and young persons in the facility is guaranteed. As a rule, this is assumed when the rights of children and young people in the facility are protected by the use of appropriate procedures for participation and the opportunity to complain about personal matters.

64. The Federal Workshops Co-regulation Ordinance (WMVO) provides for a complaints mechanism for persons with disabilities in workshops. According to WMVO, Section 4, Paragraph 3, the workshop council is tasked, amongst other things, with accepting suggestions and complaints from the people employed there.

65. The complaints mechanisms mentioned are easy to access. Thanks to the outreach approach in line with the states' legislation on psychiatric units and care homes, access to the complaints mechanisms provided is particularly suitable for persons with disabilities living in special facilities. Easy access to complaints mechanisms is supported by the fact that care home legislation in many Länder means that the facility providers have a legal duty to give advice.

66. From the point of view of the Länder, complaints mechanisms have proved to be effective. This is shown in particular by the number of complaints made and the widespread attention these have received from the relevant bodies.

67. Details on individual Länder can be found in the Appendix Volume (Question 10).

E. Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

Reply to the issues raised in paragraph 11 of the list of issues

68. In its draft law of 8 November 2008 (Bundestag printed paper 16/1808), the Federal Government clarified its position in favour of a ratification act on the UNCRPD of 13 December 2006 as part of the written statement of facts on the relationship between Article 15 of the Convention and the national legal regulations on research on persons unable to give their consent: in order to avoid putative conflicts from the outset. With regard to Article 15 it says for example: "... The provision in Article 15, Paragraph 1, Sentence 2, makes it abundantly clear, as is already the case in the International Covenant on Civil and Political Rights, that no one may be unwillingly subjected to medical or scientific experiments which constitute torture or cruel, inhuman or degrading treatment or punishment, as laid out in Article 15, Paragraph 1, Sentence 1. Research measures carried out in the Federal Republic of Germany legally and within strict parameters do not fall within the scope of Article 15, Paragraph 1, Sentence 2..."

69. The statement in the question, that, in line with Section 40 of the Medicinal Products Act (Arzneimittelgesetz, AMG), persons who are less able to give their informed consent can take part in scientific research, even if they have not voluntarily consented after having the process explained to them beforehand, incorrectly depicts the legal position presented by the AMG.

70. In addition to the explanatory notes in the Periodic Report (cf. pp. 37 and 38) relating to Sections 40ff. of the AMG, the following should be noted:

71. Section 40, Paragraph 4, of the AMG expressly makes provision that where minors are involved, in addition to the consent of the legal representative, the minor also takes part in the consent process. Section 40, Paragraph 4, Number 3, regulates that, after the legal representative has given consent – having had the situation explained to him/her – this consent must correspond with the presumed wishes of the minor, as far as these can be ascertained. The minor must also have the clinical trial, its risks and value explained to him/her, in so far as this is possible given his/her age and intellectual maturity. Should the minor state that he/she does not wish to take part in the clinical trial, or expresses this in some other way, this must be respected. If the minor is capable of appreciating the nature, significance and consequences of the clinical trial and of making a decision accordingly, his/her consent is also required. The minor should also be offered the opportunity to talk it over during a consultation.

72. For adults who are incapable of appreciating the nature, significance and consequences of the clinical trial and of making a decision accordingly, the provisions of the AMG rule out research for the benefit of others. In addition, Section 41, Paragraph 3 of

the AMG lays down strict conditions for these clinical trials: such research must be directly connected with a life-threatening or very weakened clinical condition affecting the person concerned, and the trial must have the fewest possible risks for this person. It may only be carried out when there is good reason to expect that the benefits of using the investigational medicinal product outweigh the risks for the person concerned or that there are no risks involved. The research must also be absolutely necessary to confirm data gained from clinical trials involving persons giving informed consent or resulting from other research methods.

F. Freedom from exploitation, violence and abuse (art. 16)

Reply to the issues raised in paragraph 12 of the list of issues

73. The Federal Government does not have statistics on the number of surgical interventions mentioned in the question.

74. It is clear, though, from current specialist and scientific debate on various questions regarding therapeutic options for sexual development disorders, that surgical interventions for early sexual reassignment which were once widely accepted and to which parents consented on the basis of medical advice, are becoming ever more open to question. This development will also be included in the new guidelines on sexual development disorders announced by the German Society for Paediatric Endocrinology and Diabetes (DGKED), the German Society for Paediatric Surgery (DGKCH) and the German Society for Urology (DGU).

75. Moreover, the existing law already contains regulations to protect intersexual children from irreversible surgical interventions: treating intersexual persons requires the patient's consent in the same way that it is needed for every therapeutic procedure. The necessary consent is only effective in law if he/she has been provided with all the essential information needed prior to consent being given; in particular regarding the nature and scope of the procedure, how it is performed, its expected consequences and risks, as well as its necessity, urgency, suitability and chances of success in view of the diagnosis and treatment (cf. German Civil Code (BGB), Section 630e, para. 1). For only careful and thorough information makes it possible for the patient to exercise their right to self-determination and to make an informed decision about giving consent to an intervention. Only in this way are patients able to exercise fully their right to self-determination as laid down in the Constitution. The content and scope of the provided information, as well as the manner in which it is conducted, are always dependent on the circumstances of the individual case and, in particular, on the urgency of the procedure and its associated risks.

76. Should the patient be unable to give consent, this must be obtained from someone entitled to give it (BGB, Section 630d, para. 1, Sentence 2). In the case of minors who are too young to give consent, their legal representatives – as a rule these are the parents, in the context of parental custody (BGB, Section 1626) – are authorized to consent to medical treatment. In this case, the obligations to explain, in line with BGB, Section 630e, Paragraph 1, relate to the parents (BGB, Section 630e, para. 4). The parents' consent is only valid if they, in the same way as a patient who is capable of giving consent, have been fully and appropriately informed of all the essential facts to enable them to make a decision on consent before the procedure.

77. The fundamental right of a patient to agree to or decline a particular treatment does not apply to the parents of an underage child acting as its legal representatives to the same extent as it does to an adult who only has responsibility for himself/herself. Parents are obliged to base their decision first and foremost on the well-being of the child (BGB, Section 1627). It is first and foremost the parents' responsibility to substantiate what

corresponds to the child's well-being. A decision by state agencies instead of a decision by the parents is provided for in law only exceptionally and under strict conditions (e.g. according to Section 1666 of the BGB, when the child's welfare is under threat). Whether the treatment in question is warranted or whether its refusal constitutes a reasonable decision from the point of view of the child's welfare is for the courts to decide on the basis of the circumstances of the specific individual case.

78. Whether further measures are needed to supplement the existing regulations in German law, to protect intersexual children from irreversible surgical interventions that are neither medically essential nor in the best interests of the child, is to be one of the topics discussed in an interministerial working group on the topic of intersexual persons.

Reply to the issues raised in paragraph 13 of the list of issues

79. In adult guardianship law, sterilisations are only possible under very strict conditions. If the individual concerned is able to give consent, only he/she can consent to sterilisation. If he/she is unable to give consent, sterilisation may not take place against the wishes of the individual involved (German Civil Code, Section 1905, para. 2, Number 1). The individual's wishes are sufficient in this case, and there are no requirements for a minimum level of understanding. Compulsory sterilisation is therefore forbidden.

G. Protecting the integrity of the person (art. 17)

Reply to the issues raised in paragraph 14 of the list of issues

80. Information on the number of times courts have approved compulsory treatments on the basis of the new regulation has been collected since 1 January 2014, and so it is predicted that a view of the situation across Germany will be available around the middle of 2015. Preliminary reports from working practice suggest that compulsory medical procedures are occurring significantly less often than was the case under the previous law (Jürgens, Adult Guardianship Law, 5th edition, German Civil Code, Section 1906, margin number 31).

81. For details on individual Länder, see the Appendix Volume, Question 14.

H. Independent living and inclusion in the community (art. 19)

Reply to the issues raised in paragraph 15 of the list of issues

82. Overall, results show that the last 10 years in Germany have seen a sharp increase in the number of persons with disabilities receiving outpatient care. The number of persons with disabilities living in supervised accommodation (assisted living) in the community has risen by more than 150% since 2003, whilst the number being cared for in facilities as inpatients (in 1000s of residents) remains virtually constant. By the recording date of 31 December 2010, over 40% of all services across Germany went to support persons living in the community and receiving outpatient care.

83. The Federal Government's National Action Plan to implement the UNCRPD also aims to make it possible for all people in Germany, with and without disabilities, to live together in towns and communities, and to do so with self-determination and full accessibility, irrespective of their care needs. This objective is about more than just making accommodation accessible: its most important aim is to create alternative forms of living for all persons with disabilities, whatever their disability might be. Services and products for persons with disabilities are currently faced with the question of how to make the change from offering support on an institutional level and instead target the support at

individuals in the community. The Federal Ministry of Labour and Social Affairs is therefore supporting an assistance project, for example, which will produce a tool for development in the form of a checklist to point the way forward. The project aims to create and put into use an "Index for Inclusion" tool to develop inclusive housing and support services for persons with disabilities, to provide a way into the community and make that community inclusive. The project results will be ready in 2016 and will also be made available in an easy-to-read format, so that service-users themselves can also access the insights that have been gained.

84. For details on individual Länder, see the Appendix Volume, Question 15.

Reply to the issues raised in paragraph 16 of the list of issues

85. An overview of the comparative costs mentioned in this question is provided by the reports from the Federal Association of Regional Social Assistance Agencies (BAGüS). BAGüS tells us that in 2012 the gross expenditure on institutionalised (residential) living for each person entitled to benefits, as a weighted average, based on the 21 regional social assistance agencies that took part in the analysis, was €39,940 per year. This value contains the gross expenditure before the deduction of revenue and in particular that from other prioritised social benefits and pensions which must be used by those entitled to benefits for social services, in accordance with Book XII of the Social Code (SGB XII). Furthermore, the gross expenditure for institutionalised living includes professional integration assistance (participation) and care, as well as the subsistence benefits to cover living costs and accommodation. In 2012 the above-mentioned revenue amounted to 17.6% of gross expenditure on average, according to the BAGüS data.

86. The net expenditure for assisted living for 2012 amounted to a weighted average of €9,448 per year, according to BAGüS records. This value includes expenditure for professional support services (integration assistance as laid down in Book XII of the Social Code) after deduction of the revenue to be applied (i.e. net expenditure). The reason for the difference between this and institutional services can be found in the provisions of social security law (cf. Book XII of the Social Code, Section 92). Furthermore, unlike institutional services, this value does not include living and accommodation costs. These are covered by other benefits in Book XII of the Social Code (assistance with living costs and basic income support). Care insurance benefits are excluded from this gross expenditure and are supplied separately if needed.

87. The tightly structured German social assistance legislation and the different ways benefits are handled in institutional living and assisted living make it significantly more difficult to give comparison costs.

88. In a comprehensive survey across Germany, data were to be collected of all the actual benefits recipients from the 23 BAGüS members who moved out of a home between 1 September 2010 and 30 November 2010 (three months) and then received benefits as part of assisted living. All total net costs apportionable to the social assistance agencies were taken as a basis. This means the actual care costs, plus the costs of accommodation, benefits to cover living expenses or care assistance, irrespective of responsibility at local or regional level. This was the only possible way to make a real comparison of all social assistance benefits without having impacts measured in one area, only to have them ignored in others.

89. In most of the cases investigated, and taking all of the costs into consideration, assisted living was less expensive for the social assistance agencies: the effect on costs was three times higher for persons with a psychological health problem than for persons with a mental health problem; around 26% of all those in assisted living and eligible for benefits were not dependent on additional welfare benefits to cover their living costs (in additional to care benefits); for around 16% of people on benefits, assisted living costs the social

welfare authorities more overall than did the previous inpatient care; for persons with a psychological health problem, care in the community was less expensive than inpatient care in 92% of cases. For persons with mental disabilities this was true in 72% of cases. There were few persons with physical disabilities included in the random sample and it was not worthwhile to look at these in isolation. The significant proportion of cases where the change to care in the community caused minor cost savings or even obvious additional costs proves that, when social welfare authorities are planning services, a needs assessment and the wishes of the benefit recipient – the qualitative performance aspect, that is – are important criteria in the decision-making process with regard to services and that one must consider more than just the financial aspects in the provision of such services.

90. For details on individual Länder, see the Appendix Volume, Question 16.

I. Respect for home and the family (art. 23)

Reply to the issues raised in paragraph 17 of the list of issues

91. Since 1 August 2013, all children who have reached their first birthday have – as laid down in Book VIII of the Social Code (SGB VIII), Section 24, Paragraphs 2 and 3 – a legal right to a place in childcare and thereby unlimited access to education, nurturing and care in a nursery or day care centre. For some decades now, children in nurseries and day care centres have been cared for in groups, regardless of whether or not they have a disability. Moreover, since 2005 this has been established in law, in Book VIII of the Social Code.

92. The Federal Government has provided financial support to extend care provision to children under three years of age and this has clearly had a positive effect on the growth of inclusive care facilities too. Currently around 87% of children between the age of 3 and 8 years who receive integration assistance attend an inclusive day care centre. Correspondingly, the number of inclusive childcare centres rose from 13,414 centres in 2007 to 17,048 centres in 2012. And accordingly, the number of centres for children with disabilities fell from 346 to 318 in the same time period. Around a third of all childcare centres across Germany – a total of approximately 52,000 – are inclusive.

93. In addition to the entitlement to child day care, there are services to help integrate children and adolescents with disabilities and these are provided, depending on the disability in question, either by social assistance (in the case of an actual or imminent mental or physical disability, in line with Book XII of the Social Code, Sections 53, 54) or by child and youth services (in the case of an actual or imminent psychological health problem, in line with Book VIII of the Social Code, Section 35a).

94. Furthermore, child and youth services include various services and benefits for families, irrespective of whether a child has a disability or not. These include in particular the child-raising benefits and support services as laid down in Book VIII of the Social Code, Sections 27 ff, which comprise a range of different offerings for parents who need support in raising their children.

95. For details on individual Länder, see the Appendix Volume, Question 17.

J. Education (art. 24)

Reply to the issues raised in paragraph 18 of the list of issues

96. Please refer to the statistical overviews included in the Appendix Volume on Question 18. It is unfortunately impossible to break down the inclusive education students according to dedicated classes for inclusive education and external classes.

Reply to the issues raised in paragraph 19 of the list of issues

97. In the federal structure of the Federal Republic of Germany, education policy does not lie within the remit of the Federal Government but is the responsibility of the education ministries of the Länder (Länder have autonomy in matters of culture and education). As a result, the Länder are not under the supervision of the Federal Government in this field. As regards all aspects relating to the school education of young persons with disabilities, the Länder are currently in a development process, and they are managing this process on the basis of their specific structures and traditions with a variety of legal regulations and implementation strategies. Against the background of the UNCRPD, the Länder formulated their common concern in 2011 in a fundamental recommendation "Inklusive Bildung von Kindern und Jugendlichen mit Behinderungen in Schulen" ("Inclusive School Education for Children and Young Persons with Disabilities"), thereby making a shift of perspective towards inclusive education. The Länder are facing technical and pedagogical development tasks, which they will implement in cooperation with stakeholders and civil society.

98. The National Conference on Inclusive Education, "Inklusion gestalten — gemeinsam, kompetent, Professionell" ("Making Inclusion Happen — Together, Competently, Professionally"), which took place on 17 and 18 June 2013, was convened jointly by the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Education and Research and the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder, with the involvement of associations of persons with disabilities. The conference provided a platform for an exchange of experience where politicians, representatives of the education administration, educational practitioners as well as associations of persons with disabilities could meet and exchange examples of good practice. The main theme of the conference – the professionalisation of specialist staff for inclusive education – addressed one of the current challenges in the implementation of inclusive education.

99. The Länder keep each other informed on the status of implementation of inclusive education on a regular basis via the committees of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder and an annually updated survey (latest update: 27.11.2013), which is available in German.

100. The starting point is that all young people – irrespective of the nature and seriousness of their disabilities – are integrated into the school system. In the Federal Republic of Germany, the right to education is enforced through the statutory obligation of children to attend school. This basic concept has traditionally included different types of education offered in special schools (special education schools as well as promotion, development, training and counselling service centres and centres of excellence). These can be temporary or can last for the whole of a child's time at school. The decision as to whether a child would be entitled to a range of counselling, support or educational services is usually taken on a case-by-case basis and with the help of a special educational assessment. In principle, every child or young person with a disability is given the chance to get access to education and to leave school with a certificate appropriate to his/her abilities.

101. When considering special schools in Germany, it is necessary to bear in mind the historical perspective and that it was only after the years of National Socialism that a start was made to grant persons with disabilities access to education. The highest possible social participation of children and young people was the main objective of special education schools, driven by the quest for care and special protection. The practice of supporting special needs in Germany led to the development of a complex school system, in which children and adolescents were supported by specially trained, highly motivated and highly professional teachers and caregivers.

102. The general school system in Germany is characterized by a diverse and complex structure within which the system of special education schools has been developing over the decades. Developing the current structures into an inclusive school landscape is a long-term reform process that should not be underestimated, and the Länder will need additional time to ensure that the implementation of an inclusive education system is viable in the long term and is supported by society.

103. Germany was dealing with the issue of full and free access to the mainstream general education system for children and young persons with disabilities even before the UNCRPD came into force. For many years this task was driven forward by individual initiatives, schools or special educational institutions. The examples of inclusive pedagogy that developed in this context constitute an important basis for the transformation of the education system into an inclusive school system. It is also worth noting that the education authorities are increasingly looking beyond the individual school and are working towards creating regional networks and further system-related developments.

104. An overview shows us that various Länder have already amended their Education Act, in order to implement the UNCRPD requirements. Others are still drafting, testing or finalizing an amendment to their Education Act on the basis of expert recommendations or following state action plans. Most Länder intend to introduce a system where parents have the right to choose between mainstream general education schools and special education schools, whereas in several Länder this continues to be subject to the availability of financial resources. Virtually all Länder are following a development approach based on guiding principles, which are developed, as a rule, in close cooperation with various civil society stakeholders. In addition, support measures are being developed to realise parental choice. Parental choice no longer exists in those Länder in which some educational offerings in special education schools have been phased out. In these Länder, all pupils with special educational needs or an established entitlement to receive special educational support attend a mainstream school. For pedagogical reasons, but also in order to use resources efficiently, nearly all the Länder are working towards group-based education for pupils with disabilities. In individual Länder this has led to the creation of regional or supra-regional specialized inclusive education schools.

105. Essential prerequisites for successful, inclusive education services are the necessary specialist knowledge, the attitudes and the behavior of all stakeholders, and, above all, the specialist staff. Accordingly, in all Länder, reforms of initial and in-service teacher training based on common requirements across the Länder are either in preparation or are already being implemented. By adopting the amended "framework agreements" on training and assessment for teaching posts in 2012, the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder has determined that "basic pedagogical and didactic skills in the area of dealing with diversity and inclusion as well as the fundamentals of educational needs assessment" are an important component in the training for all types of teaching careers. Accordingly, the profile for special needs education in the "Common Requirements of the Länder for Disciplines and Subject Didactics in Teacher Training" of 2013 was updated in 2014 and, also in 2014, the "Standards for Teacher Training: Educational Sciences" were adapted to meet the demands of inclusive schooling.

106. The above-mentioned framework requirements constitute a legally binding basis for federal legislation in teacher training. Multi-professionalism is mainly achieved by teachers of different disciplines working together as well as through cooperation with specialists from other fields (psychology, medicine, social education, therapy, youth work, etc.). These measures will be supported in a variety of ways by teaching assistant services as part of integration assistance. At the same time, it should be noted that the structure of payers among the Länder differs widely.

107. One question often asked is how an inclusive school can be equipped with the appropriate amount of material and personnel resources. Building alterations, equipment purchasing and auxiliary staff represents extra costs for every inclusive school. Federal state governments, municipal funding agencies and service providers are in a constant dialogue on this matter.

108. The Länder have prioritized the implementation of inclusive education, and are in constant contact with one another as they are facing similar problems and challenges.

109. The Länder recognize that the task of creating an inclusive education system involves all school types. Vocational schools too are striving for a diversification in educational provision in order to support persons with disabilities to participate in working life. Efforts are also being made in Early Childhood Education. In many cases, all-day education offers are creating the prerequisites for children with disabilities to develop their communicative, social, emotional, cognitive and physical abilities and, with reasonable accommodation, to learn successfully in a mainstream general education school.

110. The support systems for in-service teacher training and advanced training for specialist staff, such as the state institutes and quality assurance agencies in the Länder, play an important role in this entire development process. In addition, the "Quality Initiative for Teacher Training", an agreement between the Federal Government and the Länder, can also contribute to accommodating requirements of multi-professional cooperation through individual projects at universities offering teacher training programmes.

111. For details on individual Länder, see the Appendix Volume, Question 19.

K. Work and employment (art. 27)

Reply to the issues raised in paragraph 20 of the list of issues

112. The rise in the number of people in workshops is not due to the fact that persons with disabilities are increasingly being taken on in workshops, because the number of new workshop recruits has been declining for many years. Whilst the Federal Employment Agency reported 18,193 entrants to induction procedures and vocational training in 2006, in 2013 there were only 13,780.

113. The rise in the number of employees in the workshops is caused by the increase in workshop "manpower resources". Persons with disabilities have a legal right to employment in a workshop until they reach retirement age. As a result of medical progress, more and more persons with disabilities who were assigned to a workshop for disabled people because of the nature or severity of their disability, including an increasing number of persons with the most severe or multiple disabilities, are reaching retirement age.

114. One of the Federal Government's policy priorities is to get persons with disabilities working in the mainstream labour market. The right to integration into working life within a workshop for disabled people, is only granted to person with disabilities who are assigned to these facilities for workplace integration due to the nature or severity of their disability.

115. In 2009, the Federal Government created its "Supported Employment" initiative, which is another measure of support to help persons with disabilities who find themselves in the grey area between workshops for disabled people and the mainstream labour market, to integrate into working life on the mainstream labour market.

116. The supported employment initiative has now successfully taken hold. In December 2013, there were 3,129 places nationwide.

117. The Federal Government believes that there is still a place for workshops offering services to help people participate in working life. However they must offer opportunities to participate in working life outside of the workshop. This means workshop jobs being available externally, in businesses on the mainstream labour market. Workshops also have the responsibility to help support people transferring onto the mainstream labour market. Job placements in other businesses can pave the way for this to happen.

118. The Federal Government is considering extending integration assistance as part of a new federal participation act, and intends to introduce regulations making it possible to offer those persons with disabilities who are currently dependent on a workshop alternative employment opportunities and thus greater choice. It will also be possible to use an "Employment Budget" to create jobs on the mainstream labour market for those people who have an entitlement to a workshop place.

119. For details on individual Länder, see the Appendix Volume, Question 20.

Reply to the issues raised in paragraph 21 of the list of issues

120. There is no available data on workplaces where the requirements for accessibility have been implemented. Similarly, we do not know how many employers who employ persons with disabilities have made the appropriate provisions.

121. The Workplaces Ordinance (ArbStättV) contains regulations on how workplaces are configured and how they operate (Section 1, para. 1). These regulations promote the health and safety of employees. With regard to the needs of employees with disabilities, the Workplaces Ordinance (Section 3a, para. 2) includes requirements for workplace accessibility. Should an employer employ persons with disabilities, he must configure and run the workplace in a way that takes into account the special requirements of these employees with regard to health and safety. The Ordinance states that this applies in particular to making workplaces fully accessible as well as to installing fully-accessible doors, traffic routes, escape routes, emergency exits, stairs, signage, washrooms and toilets.

122. ArbStättV regulations are therefore consistent with the UNCRPD requirements regarding health and safety in the workplace, if persons with disabilities are employed there.

123. To put the requirement in ArbStättV, Section 3a, Paragraph 2 in concrete terms, the Committee on Workplaces (ASTA) drew up a Technical Rule on accessibility in the workplace (ASR V3a.2 Accessible Workplace Design). The Technical Rule was officially announced in the Joint Ministerial Gazette by the Federal Ministry of Labour and Social Affairs and is available free of charge on this Federal Institute for Occupational Safety and Health website: http://www.baua.de/de/Themen-von-A-Z/Arbeitsstaetten/ASR/ASR-V3a-2.html.

L. Participation in political and public life (art. 29)

Reply to the issues raised in paragraph 22 of the list of issues

124. According to the German Constitution, all citizens are equal in the eyes of the law and therefore all Germans, including of course persons with disabilities, have the right to vote and to stand as a candidate in national, federal state and local elections (German Basic Law, art. 38, para. 1, Sentence 1, and art. 28, para. 1, Sentence 2). The principle of universal suffrage also applies to European elections (European Elections Act, Section 1, para. 1, Sentence 2).

125. The Federal Electoral Law (BWG) makes provision for a loss of voting rights only in those cases where: a person has been stripped of the right to vote following a judicial decision; a judgement has been made on an individual basis to the effect that a person needs a legal guardian appointed to them, to represent their interests on a long-term basis; or that a person has been confined to a psychiatric hospital, because he/she has committed a crime whilst being exempt from criminal responsibility and his/her condition gives good reason to believe he/she will commit serious crimes and is therefore a threat to the public (BWG, Section 13, in connection with Section 15, para. 2, Number 1). Corresponding regulations are also to be found in the European Elections Act and in the Land and Local Elections Acts.

126. Therefore, persons with disabilities are not included in these suffrage exclusions due to their disabilities alone. They may, however, be affected under the above-mentioned conditions. In principle, persons with disabilities will only have a "legal guardian" appointed for them (in line with the German Civil Code, Section 1896), when this is necessary to deal with their affairs, because no other (priority) assistance is possible or adequate. Should these conditions be met, a court will appoint a guardian to deal with the issues at hand, as required in this individual case. Deprivation of the right to vote as per Section 13, Number 2, of the Federal Electoral Law, on the other hand, presumes a long-term – i.e. not resulting from a temporary order alone – guardianship covering all matters. This requirement only occurs in a very limited number of guardianship orders.

127. As envisaged in the National Action Plan to implement the UNCRPD, the Federal Government has commissioned an interdisciplinary study by five professors of various disciplines. The study will show i.e. the extent to which persons with disabilities lose their electoral rights and whether the law needs to be changed in this respect. The study results will be available at the end of 2015.

III. Special obligations

A. Data collection and statistics (art. 31)

Reply to the issues raised in paragraph 23 of the list of issues

128. In 2013, Germany produced a report on the participation of persons with impairments, with a structure and methodology similar to that in the UNCRPD. The indicators were presented with reference to the UNCRPD articles and paint a detailed picture of the lives of persons with impairments in Germany. The participation report is based on the bio-psychosocial model of disability in line with the International Classification of Functioning, Disability and Health (ICF).

129. The participation report uses data from public health reporting: "German Health Update" (GEDA) and "German Health Interview and Examination Survey for Children and Adolescents" (KIGGS).

130. Data from the Socio-Economic Panel (SOEP) were also analyzed. Official statistics are another important basis: every four years the microcensus reports on persons whose disability has been officially confirmed. It is possible to link this with other characteristics (e.g. education, health, labour market, income). Sorting by age makes it possible to make a special analysis of children's circumstances.

131. Comprehensive data are already available in the various areas of children's rights policies with regard to children and young persons with disabilities too. These show how effective political measures have been and indicate what further political steps are needed. The database is being constantly expanded wherever necessary.

132. The participation report also contains a critical review of the data already available in Germany and demands greater data collection efforts to safeguard the effectiveness of action being taken by the State.

133. This has helped Germany recognize the need to continue to improve the database and has therefore made clear the methodical prerequisites for a representative survey on participation. Much time and effort went into considering how persons with limited communicative abilities can be surveyed. People who do not live in private households are also to be included. The next participation report (announced for autumn 2016) should be able to include all the survey data collected to that date. Further developments to participation reporting are being carried out in agreement with the Federal Government Commissioner for Matters relating to Disabled Persons, the Commissioner for Migrants, Refugees and Integration, the German Disability Council and the German Institute for Human Rights. A board of academic advisors, with the active participation of specialists nominated by the German Disability Council, is responsible for the content quality and provides an independent commentary on the findings.

B. International cooperation (art. 32)

Reply to the issues raised in paragraph 24 of the list of issues

134. In terms of development cooperation, the existing system whereby international cooperation measures are encrypted makes it impossible to collate a systematic record or monitor the inclusion of persons with disabilities in general programmes and projects. Nevertheless, possible ways of making a systematic record are currently being looked into. Until now the recording has been done manually, supported by identifiers of good governance and human rights. By observing human rights standards and principles when the suggested programmes of technical and financial cooperation are being put together for the German State, the inclusion of persons with disabilities and accessibility are assured. Inclusion and accessibility also make up part of the human rights aspects of the test criteria used when the Länder are formulating policies. Furthermore, inclusion and accessibility form part of the human rights standards and principles being considered in the evaluation tool currently under development.

135. Evaluations of projects and programmes, plus impact assessments, are of vital importance in German state development cooperation. Accordingly, measures are designed, executed and assessed with a focus on their impact. The quality and impact of programmes and projects aimed at persons with disabilities are recorded in the project reports. They also appear on occasion in independent evaluations. Independent institutions are available to German state development cooperation for the purpose of evaluation and impact assessment (German Institute for Development Evaluation).

136. Between 2009 and 2013, projects with a total volume of around 50 million euros were sponsored by the Federal Ministry for Economic Cooperation and Development to improve the lives of persons with disabilities in developing countries.

137. The German Foreign Office offers humanitarian aid in line with the humanitarian principles (neutrality, impartiality and independence, humanity). Consideration of the particular needs of persons with disabilities forms part of the "Foreign Office Strategy on Humanitarian Aid Abroad". One of the Federal Government's priorities is that their particular needs are taken into account when aid assessments are made in humanitarian situations.

138. In the course of its humanitarian aid realignment, the Foreign Office has initiated a process: to define more closely the growing number of cross-cutting themes, including respect for the rights of persons with disabilities, against the background of its own humanitarian engagement; to place greater focus on them in its humanitarian work; and to incorporate them in initiatives that assure the quality of humanitarian aid and prior expertise. When projects are being proposed, the Foreign Office's partners in humanitarian aid must show how particularly vulnerable people have been taken into consideration in the projects in question. This applies to persons with disabilities in particular.

139. On the international stage – in the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) – Germany has promoted agreement on decisions for persons with disabilities, to give greater protection to refugees and displaced persons with disabilities. The Federal Government has also supported the development of the UNHCR "Age, Gender and Diversity Policy", which guarantees the same consistent protection for all persons, including persons with disabilities.

140. As part of its policy of sponsoring projects that protect human rights internationally, the Foreign Office supports projects all over the world promoting the rights of persons with disabilities. These include: capacity-building for disability rights organisations; support for advocacy campaigns; as well as linking up disability rights organisations with international processes of human rights protection, e.g. at the United Nations. The implementation of human rights projects is followed by German representatives abroad as far as is possible. As part of the final deployment-of-funds report, a check is made for each project to ascertain whether the resources were used appropriately, whether the goal was achieved and whether the project was an overall success.

141. Between March 2009 and July 2014, the Foreign Office contributed 358,000 euros to support human rights projects relating to persons with disabilities.

C. National implementation and monitoring (art. 33)

Reply to the issues raised in paragraph 25 of the list of issues

142. For many years now, the State Commissioners for Matters relating to Disabled Persons have met twice yearly in a self-formed working group, to discuss a wide variety of topics or matters of particular urgency and to formulate a common standpoint. They may look at projects being run by the host state or at subjects of general interest, as well as at current or future legislation plans. Their most recent meeting focused on the planned reform of how persons with disabilities participate in society and the upcoming care reforms, in relation to which they approved a set of requirements directed at the Federal Government and the Länder governments, as well as other stakeholders where appropriate. The meeting is organised by the Federal Association for Rehabilitation together with the relevant State Commissioner. The current Federal Government Commissioner for Matters relating to Disabled Persons always attends these meetings. He/she keeps in contact with the Länder Commissioners for Matters relating to Disabled Persons, as necessary, and this means there is a comprehensive two-way flow of information and opinion.

143. The host State Commissioners act as the working group's points of contact until the next session and decide who will take part in potential meetings at the Federal level.

However this does not mean that they represent the whole group, rather they are there to represent interests and participate in order to brief the other Commissioners. In certain cases, the Commissioners take a vote to decide who will represent them. As independent State Commissioners, their primary role is within their own state and they have only a very limited role to play in relation to the Federal Government. For this reason, the coordination of their activities in relation to the Federal Government is rather a different matter, as what we are dealing with here can only be a coordinated representation of interests.